4-18-2014

Turner v. City of Lapwai Respondent's Brief Dckt. 41560

IN THE SUPREME COURT OF THE STATE OF IDAHO

MERCEDES TURNER, Plaintiff/Appellant, vs. CITY OF LAPWAI, an Idaho municipal corporation, Defendant/Respondent.	Supreme Court No. 41560 District Court No. CV-2012-2587 (Nez Perce County)

BRIEF OF RESPONDENT CITY OF LAPWAI

Appeal from the District Court of the Second Judicial District for Nez Perce County

Honorable Carl B. Kerrick, District Judge presiding

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STATEMENT OF CASE

I. Nature of the Case

Appellant Mercedes Turner ("**Turner**") filed a Complaint stating two causes of action against Respondent City of Lapwai ("**City**"): a wage claim based upon the Idaho Wage Claim Act, I.C. §§ 45-601 to -621, and an expense reimbursement claim presumably based upon Idaho common law. (R Vol. I, pp. 7–8.) The City sought summary judgment on both causes of action because: (1) Turner failed to file a sufficient notice of either of her claims as required by Idaho Code §§ 50-219, 6-902(7), 6-906, and 6-907, and (2) Turner's wage claim is barred by the six-month statute of limitations made applicable by Idaho Code § 45-614.

The District Court granted summary judgment on both causes of action based on Turner's failure to file a sufficient notice of claim. (R Vol. I, pp. 119, 125–26, 128–29.) The District Court was not required to reach the City's alternate statute of limitations argument regarding the wage claim. (R Vol. I, p. 119 n.1.) Turner filed a timely Notice of Appeal. (R Vol. I, pp. 130–33.)

II. District Court Proceedings

The City agrees with Turner's statement of "Procedural History" (Appellant's Br. 5), except that the City's motion for summary judgment and supporting brief were filed on July 3, 2013. (R Vol. I, pp. 15, 17.)

III. Relevant Facts

Turner was hired by the City in May 2006 as City Clerk and City Treasurer. (R Vol. I, p. 5 ¶¶ 5–6.) Turner's employment with the City was terminated on January 20, 2011. (R Vol. I, p. 6 ¶ 14, p. 25 ¶ 4.)

Later that day, Turner submitted a check request for her alleged wages — including hundreds of hours of alleged compensatory ("**comp**") time, sick time, and vacation pay — to the City's outside, private auditing firm. (R Vol. I, pp. 67–74.). Turner mailed a follow-up letter dated February 1, 2011 to Mayor Hernandez. (R Vol. I, p. 76.).

On February 3, 2011, the City paid Turner her last paycheck. (R Vol. I, p. 45, p. 64 ¶ 12, p. 75.) The paycheck included the 84 hours of wages to which the City then believed Turner was entitled, but not the hundreds of hours of alleged comp time, sick time, and vacation pay shown on Turner's check request. (R Vol. I, p. 7 ¶ 16, p. 75.)

On February 28, 2011, Turner sent an email and letter to a single member of the five-member City council regarding the additional comp time, vacation pay, and mileage reimbursement she was allegedly owed. (R Vol. I, pp. 77–79.) On March 21, 2011, Turner received a letter from Mayor Hernandez advising her that the City would notify her after reviewing her request for additional comp time and "other reimbursable items"

with an outside accounting service. (R Vol. I, p. 80.) The City made no further payment to Turner.

Turner filed her Complaint on December 21, 2012, which was 23 months after her last day of employment with the City. (R Vol. I, pp. 4–9, p. 25 ¶ 4.)

ADDITIONAL ISSUES PRESENTED ON APPEAL

The City believes the issues on appeal are most accurately stated as follows:

1. Is Turner's expense reimbursement claim barred for her failure to file a claim with the City clerk as required by Idaho Code § 50-219?

2. Is Turner's wage claim barred for her failure to file a claim with the City clerk as required by Idaho Code § 50-219?

3. Is Turner's wage claim barred by the statute of limitations made applicable by Idaho Code § 45-614?

ARGUMENT

Turner asserts two claims in this case: one for unpaid wages, and one for unreimbursed expenses. (R Vol. I, pp. 7–8.)[1]

Turner's wage claim was properly dismissed if the City is correct either that Turner failed timely to file a sufficient claim detailing her wage claim or that her cause of action was subject to the six-month statute of limitations made applicable by Idaho Code § 45-614.

Turner's expense reimbursement claim was properly dismissed if the City is correct that Turner failed timely to file a sufficient claim detailing her reimbursement claim.

Summary judgment was warranted on all of these grounds. The District Court's judgment should therefore be affirmed.

I. TURNER FAILED TO PRESENT AND FILE A "CLAIM" FOR EITHER OF HER TWO DEMANDS.

Any person with a claim for damages against a city must file her claim "as prescribed by chapter 9, title 6, Idaho Code." I.C. § 50-219. Satisfying this notice requirement is a "mandatory condition precedent" to bringing suit. *Banks v. Univ. of*

[1] The City denies Turner's substantive assertions regarding the nature of her employment agreement — most particularly her claimed right to accrue hundreds of hours of comp time payable upon termination. However, the City accepts that Turner's averments must be taken as true for purposes of summary judgment.

Idaho, 118 Idaho 607, 608 (1990); *see also* I.C. § 6-908. Turner agrees that both of her claims are subject to this notice requirement. (R Vol. I, pp. 51–52.)

Three separate statutory provisions of title 6 are particularly relevant to Turner's two claims.

First, Idaho Code § 6-902(7) defines the word "claim" as "any written demand to recover money damages from a governmental entity . . ." I.C. § 6-902(7). The "claim" must thus be in writing and demand money damages.

Second, Idaho Code § 6-906 provides a 180-day time limit for the filing and requires that it "shall be presented to and filed with the clerk or secretary of the political subdivision." I.C. § 6-906.

Third, Idaho Code § 6-907 requires that the claim contain certain elements of information. Among other things, the claim "shall accurately describe the conduct and circumstances which brought about the injury or damage" and the claim "shall contain the amount of damages claimed." I.C. § 6-907.

Idaho Code § 6-907 also contains a "savings clause" that addresses certain inaccuracies in stating the content required by that same § 6-907:

> A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

I.C. § 6-907 (emphases added).

A. The Savings Clause of § 6-907 Does Not Cure Deficiencies Other Than Inaccuracies of the Content Required by § 6-907.

The gravamen of Turner's argument is that this savings clause cures many defects relevant to Turner's various communications and shifts the burden to the City to prove those defects were prejudicial. (Appellant's Br. 22–25.) Four points are critical to a proper analysis of this savings clause in light of Turner's arguments.

First, the savings clause limits its curative effects only to claims "filed under the provisions of this section" — i.e., a "claim[] presented to and filed with a governmental entity." I.C. § 6-907 (emphasis added).[2] The savings clause does not address all writings of any nature. To the contrary, it presumes a "claim" has been properly "filed" in whatever manner the statute may otherwise require. This is consistent with § 6-908's bar on claims that are not "presented and filed within the time limits prescribed" by the statute. *See* I.C. § 6-908.

Second, the savings clause addresses and excuses only non-prejudicial inaccuracies in stating the content required by that same section, i.e., § 6-907. It does not address or excuse omissions of the content required by § 6-907.

Third, the savings clause does not address — much less excuse — any other requirement stated in another section of the statute: namely, the requirement that a claim

[2] A "governmental entity," in turn, "means and includes the state and political subdivisions" defined in § 6-902. I.C. § 6-902(3).

be "written," I.C. § 6-902(7); that it demand "money damages," *id.*; that it be filed within the 180-day time limit, I.C. § 6-906; or that it be presented to and filed with the city clerk, *id.*

Fourth, the phrase "or otherwise" read in context excuses inaccuracies in stating the other contents required by § 6-907, such as the "conduct," "circumstances," "names," and "residence" also required by § 6-907 but not listed in its savings clause. *See* I.C. § 6-907.

But the savings clause would swallow chapter 9 whole if the phrase "or otherwise" had the effect of excusing even the requirements stated in other sections of the chapter — for example, § 6-902(7)'s requirement for a "written" demand, or § 6-906's requirement of presentment and filing upon a particular identified official within 180 days. Were the phrase "or otherwise" accorded such sweeping meaning, the District Courts would be compelled to conduct fact-intensive prejudice determinations resulting from orally stated demands, or written demands sent to any government employee, or demands submitted after 180 days.

The savings clause simply states the Legislature's policy choice that a claim shall not be rejected "by reason of" an inaccuracy in content. *See* I.C. § 6-907; *Smith v. City of Preston*, 99 Idaho 618, 621 (1978) (analyzing § 6-907 and noting "there was nothing in the record to suggest that the city was 'misled to its injury' by any deficiencies in the

contents of the letter" (emphases added)). The savings clause does not state that a claim shall not be rejected "by reason of" omissions of content or failing to satisfy the requirements of other sections of chapter 9. *See* I.C. § 6-907; *see also* I.C. § 6-908.

Thus, for example, a demand stated orally to the city clerk, within 180 days, and containing perfect content required by § 6-907 is invalid because it is not even a "claim" in the first place: the statute defines a "claim" as a demand that is "written." I.C. § 6-902(7). The savings clause of § 6-907 and prejudice inquiries would be irrelevant. *See Avila v. Wahlquist*, 126 Idaho 745, 748 (1995) (declining plaintiff's argument that "written or oral notice may be sufficient . . . as long as the State is not prejudiced by the manner of imparting notice").

This construction does not eviscerate the statute or the savings clause. It honors a policy choice not to deny claims for non-prejudicial content inaccuracies. Turner's reading of § 6-907 would eviscerate the statute by permitting broad curative effects that will require significant discovery and litigation to resolve. The Legislature created a bizarrely specific statutory scheme if the entire judicial inquiry was simply intended to be, "Was the governmental entity misled to its injury?" That is not the law in Idaho.

1. The Savings Clause Does Not Cure Turner's Failure to Present Her Requests to the City Clerk.

As discussed below, the City does not accept that Turner's requests, cumulatively or otherwise, constituted a "claim," i.e., a "written demand to recover money damages."

See I.C. § 6-902(7). But even if they were cumulatively considered a "claim," Turner has never argued or could argue that she presented anything to the City clerk or filed anything with the City clerk's office. *See* I.C. § 6-906; Appellant's Br. 16.

As demonstrated above, the savings clause of § 6-907 purports neither to address nor to cure the requirement of § 6-906 that a claim "shall be presented to and filed with the clerk" of the City. *See* I.C. §§ 6-906, 6-907. The savings clause is irrelevant to that analysis. As discussed below, none of the cases Turner cites alters this requirement.

This alone provides a sufficient basis to affirm the District Court's dismissal of both of Turner's claims.

2. The Savings Clause Does Not Cure Turner's Failure to State the Amount of Her Expense Reimbursement Claim.

Similarly, even if Turner's requests for expense reimbursement, cumulatively or otherwise, were considered a "claim," they fail because none noted the amount of her 2010 expenses, even though they were surely within her knowledge by the time she made her requests in 2011. (*See* R Vol. I, pp. 66–79.)

The Court can scour the record before it and it will not find — over two and a half years after Turner's termination — a simple statement of the amount the City owed her for unreimbursed expenses.

As demonstrated above, the savings clause in § 6-907 does not cure omissions of the information required by that same section. This includes the requirement that the

claim "shall contain the amount of damages claimed," at least where the plaintiff knows or could calculate the amount. *See* I.C. § 6-907.

Again, none of the cases Turner cites alters this straightforward requirement. Turner's failure to state the amount of her expense reimbursement claim renders that claim invalid under § 6-907.

B. *Smith* and *Huff* Do Not Assist Turner's Case.

As plaintiffs have done unsuccessfully for over three decades, Turner relies upon *Smith v. City of Preston*, 99 Idaho 618 (1978), and *Huff v. Uhl*, 103 Idaho 274 (1982), for the proposition that Turner's cumulated requests fulfilled the purposes (since not the requirements) of Idaho Code §§ 50-219, 6-902(7), 6-906, and 6-907. (*See* Appellant's Br. 23–25.)

This reliance, as for past plaintiffs, is misplaced, because this Court has over the past three decades since deciding *Smith* and *Huff* repeatedly distinguished the cases and rejected a simple inquiry into whether the purposes of the statutes were met and whether the governmental entity was, per § 6-907, "misled to its injury." *See, e.g.*, *Blass v. County of Twin Falls*, 132 Idaho 451, 452–53 (1999) (rejecting a plaintiff's reliance on *Smith* even where county-owned hospital admitted it would not have conducted any different investigation had a sufficient claim been filed); *Avila v. Wahlquist*, 126 Idaho 745, 748 (1995) (distinguishing *Huff* and holding notice insufficient even where the State

was on actual notice of claim within one week of accident, conducted a full investigation, and was not prejudiced by the insufficient notice); *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 487 (1994) (distinguishing *Smith* and *Huff* and holding that written notice to city's insurer and oral statements to city representative were insufficient); *Stevens v. Fleming*, 116 Idaho 523, 531 (1989) (distinguishing *Smith* and *Huff* and holding that letter apprising city of insurance claim made directly by plaintiffs was insufficient because letter to city was not sent by plaintiffs themselves).

Turner is thus incorrect to argue that "Idaho courts have consistently applied a 'substance over form' analysis to tort notices." (Appellant's Br. 23.) Turner claims this by simply disregarding this Court's cases consistently distinguishing and limiting *Smith* and *Huff*.

Regardless, *Smith* and *Huff* are just as easily distinguished here because, in each of those cases, notice was provided directly to "the clerk or secretary of the political subdivision" as required by § 6-906. In *Smith*, the plaintiff's complaint averred (and evidence demonstrated) that the plaintiff's letter was sent to the city clerk. *See Smith*, 99 Idaho at 619.

In *Huff*, the Court specifically noted that the secretary of the political subdivision, i.e., the irrigation district, personally received notice of the claim in the plaintiff's presence, when the receptionist discussed it with the secretary and kept photocopies for

the secretary's office. *See Huff*, 103 Idaho at 275, 276–77. Contrary to Turner's argument, it is irrelevant that the claim was initially handed to a receptionist (*see* Appellant's Br. 17–19), because it was presented to and filed with the office of the official identified in the statue.

Since deciding *Smith* and *Huff*, the Court has not relented on this statutory requirement of § 6-906. In both *Avila*, 126 Idaho at 748, and *Friel*, 126 Idaho at 486, the Court rejected the Court of Appeals' holding in *Sysco Intermountain Food Service v. City of Twin Falls*, 109 Idaho 88 (Ct. App. 1985), that notice to a City's insurer could substitute for notice to the officer designated in § 6-906. *See also Blass*, 132 Idaho at 453 (notice to insurance adjuster and forwarded to proper official at hospital still not sufficient).

Smith, *Huff*, *Friel*, *Avila*, and *Blass* are all consistent: notice to persons other than the official named in § 6-906 is not notice at all, and so inquiries about prejudice, inaccuracy, substantial compliance, or otherwise are irrelevant. *Cf. Stevens*, 116 Idaho at 531 ("Since the City had no actual notice, whether or not it was misled to its injury by failure to provide formal notice is irrelevant."). Turner has never asserted that she presented and filed anything with the City clerk.

Similarly, in both *Smith* and *Huff* the amount of damages claimed was included as required by § 6-907, or the damages were specifically stated to be unknown but

forthcoming. *See Huff*, 103 Idaho at 276 (noting amount presented to secretary); *Smith*, 99 Idaho at 621 (noting "subrogation claim will be presented as soon as we have the total damages completed").

Turner asserts that the amount of her claim was plain from the paycheck request she faxed to the outside, private auditor's office 16 miles outside the City. (Appellant's Br. 11; R Vol. I, pp. 66–67.) But the paycheck request and fax nowhere stated the amount of Turner's unreimbursed expenses. (*See* R Vol. I, pp. 66–73.) Neither did Turner's letter to the mayor or her email or her letter to a single City councilor, sent over the subsequent months. (*See* R Vol. I, pp. 76–79.) This omission is not saved by § 6-907, *Smith*, *Huff*, or any other Idaho law.

The above facts and authority are sufficient to resolve this case and affirm the District Court. But Turner asserts other arguments that require response.

C. Turner's "Officials of Greater Rank" Are Irrelevant and Were Not Empowered as Turner Assumes.

Turner argues that it is sufficient that "officials of greater rank and authority" with the presumed "authority to pay [Turner's] claim" were presented Turner's requests. (Appellant's Br. 16.) This argument is incorrect for several reasons.

First, it incorrectly assumes the mayor and a single City councilor out of five City councilors had the authority to pay tens of thousands of dollars in wages to a terminated employee. This is perhaps self-evidently incorrect. The five-member City council had

that authority. Turner has provided no evidence that any other City council member received any of Turner's requests.

Turner's false assumption reveals the danger of accepting her novel argument and driving a hole through § 6-906's requirement of presentment upon the clerk or secretary of a political subdivision. The District Courts would be tasked with fact-intensive determinations regarding which "officials of greater rank and authority" in a given case are better suited to receive notices of claims than the officials designated by the Legislature. Turner's argument is incorrect substantively — the mayor and single City councilor were not so empowered — and it is misguided as a policy matter.

Second, in advancing this argument, Turner overplays the significance of the receptionist in *Huff* having been handed the notice of claim. (Appellant's Br. 17.) It did not matter who literally was the first to touch it, because that person immediately turned and advised the official authorized by statute of the claim and kept photocopies for that official's office. *See Huff*, 103 Idaho at 275, 276–77. That is why this Court wondered what more the plaintiff could have done by way of presentment. *See id.* at 277. Was he to have asked for it back and handed it to the irrigation district secretary himself?

But it was also irrelevant whether the secretary of the irrigation district was empowered to pay the claim. That is not the analysis contemplated by the statute or *Huff*. Turner falsely assumes that delivery to the mayor of a city — the purported decision

maker — is the Legislature's ultimate goal. A straightforward example proves that is unfounded: if Turner had presented a notice of claim to the City clerk, that clerk could have turned and handed it to a summer intern with absolutely no power whatsoever — and the City still would have been properly noticed and bound by the Clerk's action.

It is irrelevant for purposes of § 6-906 to whom the City clerk transfers a notice of claim or whether they are empowered to pay it. It is only relevant that the notice be presented to and filed with the City clerk. Turner's arguments to the contrary are red herrings and analytically misleading.

D. Cumulative Writings and Actual Notice Do Not Constitute a "Claim."

Turner asserts that three requests, if taken "cumulatively," satisfy the statutory content requirements for damages claims set forth in Idaho Code § 6-907. (Appellant's Br. 8, 21.) Turner provides no authority for the proposition that a plaintiff can cumulate several written requests to different parties to meet the obligation to present and file with the proper official a single, sufficient "claim" for "money damages." *See* I.C. § 6-902(7). The Court should not accept Turner's invitation to make new law on this point.

First, § 6-902(7) defines the word "claim" as "any written demand to recover money damages from a governmental entity . . ." I.C. § 6-902(7). The word "demand" is in the singular. The statute, read in context, addresses the requirements for a single, written demand — and that demand stands or falls on its own as a "claim."

The demand may not have to be in a particular form, but it must satisfy certain statutory requirements, such as the presentment and filing requirement of § 6-906. *Huff* illustrates this perfectly: as informal as Mr. Huff's "demand" may have seemed, it was timely presented to the correct official's office, it was written, it detailed an amount of damages, and it contained no prejudicial inaccuracy. *See Huff*, 103 Idaho at 275–77.

For this Court to permit Turner's notice by cumulated writings — none of which is even presented to or filed with the proper official — would be a dramatic departure from the statute and this Court's case law. The entire statutory design and purpose of channeling the required content to a single identified official of each governmental entity would be destroyed. Instead, every governmental entity would be charged with the knowledge of every writing received by any of its employees that may — taken together with other writings received by other employees — cumulatively meet the elements of a claim. Such a rule would be absurd.

This is why Judge Winmill held correctly in *Brown v. City of Caldwell*, 769 F. Supp. 2d 1256 (D. Idaho 2011), that successive "demand letters" did not constitute notice of a "claim[] for damages" under § 50-219. *See id.* at 1258–59, 1263. The successive demand letters in *Brown*, like Turner's successive requests, were in some respects extensive. (*See* R Vol. I, pp. 88–101 (copies of relevant demand letters from *Brown*'s Pacer record).) It is hard to imagine the City of Caldwell arguing that it was not on actual

notice of Mr. Brown's demands — even if they were sent to the fire chief instead of the city clerk, as Turner argues. (*See* Appellant's Br. 18–19.)

But actual notice and lack of prejudice are not the beginning and end of the analysis, as Turner wishes they were. This Court has repeatedly noted that a "claim," as defined in § 6-902(7), is intended to place the governmental entity on formal notice that an aggrieved person "intended to go a step farther by bringing a tort claim." *Pounds v. Denison*, 120 Idaho 425, 427 (1991); *accord Avila*, 126 Idaho at 748 (quoting this passage from *Pounds* and holding notice insufficient where it did not state amount of claim or provide notice that plaintiff "was pursuing a tort claim").

This Court explained this statutory purpose even in *Smith*:

> [T]he government's actual notice of the injury did not obviate the need to satisfy those notice requirements. Mere knowledge of the injury does not necessarily put the governmental entity on notice that a claim against it is being prosecuted and thus apprise it of the need to preserve evidence and perhaps prepare a defense.

Smith, 99 Idaho at 621; *see also Stevens*, 116 Idaho at 530.

Turner's case is similar to the aggrieved employee in *Pounds*. Ms. Pounds endured an entire formal grievance process with the state university, which involved cumulative writings, hearings, and appeals, which plainly put the university on actual notice of her asserted injury:

> Pounds argues that she substantially complied with the notice requirement, and that the respondents received adequate notice of her claim, by the filing

> of her grievance, the grievance hearing, and the appeal to the Personnel Commission, all of which occurred within 120 days of her last day of work.

Pounds, 120 Idaho at 427.

This Court nonetheless held that Ms. Pounds did not substantially comply with the statutory requirement to file a "claim," as defined in § 6-902(7):

> Pounds' filing of her grievance did not provide adequate notice of a tort claim against the respondents. It provided notice that she had a grievance, but did not provide notice that she intended to go a step farther by bringing a tort claim.

Id.

Turner insists that no "magic words" in Idaho law required Turner to put the City on notice of her claim once her informal requests went unsatisfied. (Appellant's Br. 12–15.) This is incorrect. First, the above Supreme Court cases supply the "magic words." And, second, the definition of "claim" in § 6-902(7) as a "written demand to recover money damages" supplies the "magic words." I.C. § 6-902(7) (emphasis added).

Black's Law Dictionary defines "damages" as "[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury." *Black's Law Dictionary* (9th ed. 2009) (emphasis added). Only when one's requests for wages and out-of-pocket expenses are denied or not timely paid does one have a claim for the "loss" or "injury" resulting from the refusal to pay. This Court's reasoning in the cases above simply

implements the statutory text defining a "claim" as a "demand to recover money damages." *See* I.C. § 6-902(7).

The District Court was thus correct: Once Turner's personal requests went unsatisfied, Turner was obligated to put the City clerk on formal notice that she asserted a statutory claim against the City for unpaid (not to mention, trebled) wages and a breach of contract claim for expense reimbursements. Instead, she did nothing for nearly two years and then filed a lawsuit.

E. Turner's Element-by-Element Presentation Obscures the Analysis of Her Requests and Her Two Distinct Claims.

Turner must cumulate her requests, of course, because none of her requests by itself meets the statutory requirements for either of her two claims. The best illustration of this is that Turner's opening brief proceeds element by element to argue that each element of sufficient notice was met by at least one of her cumulated requests. (*See* Appellant's Br. 10–21.) This allows Turner to obscure the fact that each element must be satisfied for each of her two claims.

For example, Turner's approach obscures the fact that, as already noted, nowhere in the record will the Court find the amount of Turner's expense reimbursement claim. It also obscures the fact that her first "request" — her faxed check request — was not presented to any City representative at all, but to an outside private auditing firm in Lewiston, which is 16 miles away. (*See* R Vol. I, p. 67.)

For at least these reasons, the Court should consider in turn each of Turner's proffered writings to determine if any (1) demanded "money damages" in writing, I.C. § 6-902(7); (2) was presented to and filed with the City clerk, I.C. § 6-906, (3) contained the content (even if non-prejudicially inaccurate, but not if outright omitted) required by § 6-907, and (4) put the City "on notice that a claim against it [was] being prosecuted," *Stevens*, 116 Idaho at 530. None does.

1. Turner's Check Request Is Not a "Claim."

First — in support of her wage claim only — Turner asserts she "submitted a check request" on January 20, 2011 showing the amount of her wage request. (Appellant's Br. 7.) This check request, however, was sent from Turner's office on Turner's City letterhead to a person named "Kim," an employee of the City's outside, private auditing firm, Jergens & Co., in Lewiston, Idaho, which is 16 miles away from Lapwai. (R Vol. I, p. 67 (listing recipient's 746- prefix).)

Turner wishes this Court to consider this check request as part of her cumulated requests, because it contains wage amounts, her residence address, and other required content. (Appellant's Br. 11, 20–21.) The fax was sent on January 20, 2011, on Turner's last day of work. (R Vol. I, p. 25 ¶ 4, p. 67.) It could not have provided notice of a "claim" for "damages," I.C. § 6-902(7), because Turner had no "damages," i.e., no "loss" or "injury." *See Black's Law Dictionary* (9th ed. 2009) (definition of "damages").

Turner had suffered no legal loss or injury on her last day of employment. Nobody had denied her anything. Similarly, an employee who submits her timesheet for signature at the end of a pay period has no "damages" for the wages then due, because she has suffered no loss or injury until she is refused timely payment as required by law.

Turner submitted a draft paycheck. It omits material content required by § 6-907. It does not describe any injury, the names of any persons who promised her such exceptional wages, or the circumstances justifying her right to the demanded amounts. *See* I.C. § 6-907.

Turner provided no evidence that this fax was ever shared with the City clerk. The fax to the outside, private auditor is entitled to no weight, and the Court should not consider it, cumulatively or otherwise.

2. Turner's Letter to the Mayor Is Not a "Claim."

Second, in support of both her wage and expense reimbursement claims, Turner asserts she mailed a letter dated February 1, 2011 to Mayor Hernandez. (R Vol. I, p. 76.) Turner provides no evidence that the letter was shared with the City clerk.

The letter does not contain the amount of either of her claims. (R Vol. I, p. 76.) It does not contain her address, residential or otherwise. (R Vol. I, p. 76.) The letter discusses retrieving her personal property and asks vaguely about her final paycheck. (R Vol. I, p. 76.)

There is not a scintilla of useful information about the paycheck's amount, the wage elements constituting it, justification for (or even a description of any alleged agreement supporting) its outlandish amount, the names of persons involved — nothing. (R Vol. I, p. 76.) Turner simply provides instructions for deductions. (R Vol. I, p. 76.)

She vaguely mentions a mileage check without noting its amount or the circumstances behind the accrual of mileage. (R Vol. I, p. 76.) She asks for January 2011 mileage to be calculated for her based on the City's bank records (R Vol. I, p. 76), instead of (as one might expect) her own mileage records.

The letter to the mayor was not presented to the City clerk, and it omits material content required by § 6-907. It is entitled to no weight.

3. Turner's Letter to One of Five City Councilors Is Not a "Claim."

Third, Turner sent an email and an attached letter to a single member of the five-member City council. (R Vol. I, pp. 77–79.) The letter provides some elaboration but nowhere provides the amount of either of her claims. (R Vol. I, pp. 77–79.) It does not contain any address, much less her residence. (R Vol. I, pp. 77–79.)

It does not explain the justification or agreement upon which she bases her claim to be paid 1,500 hours of comp time and vacation on top of her salary. (R Vol. I, pp. 77–79.) Indeed, all of Turner's requests, like the record, are bare of any Council meeting minutes or other Council-approved agreement supporting Turner's alleged comp time and

vacation arrangement. She requests payment of vacation and comp time pay, but not sick leave pay. (R Vol. I, p. 78 ¶ 4.) She requests mileage reimbursement but not other expenses. (R Vol. I, p. 78 ¶ 1.)

Turner provides no evidence that her email or letter was relayed to the City clerk. To the contrary, Councilor Smith replied to Turner and specifically advised her to take her mileage and payroll requests — i.e., for all items except her request for payment of her legal bills — to "the office," meaning the City clerk's office:

> I can check on #3, but I think the other request on [sic] this letter would be better served by the office. They have access to Cassel [payroll system] and files that you are making reference to. The City has had temporary people filling positions, although very competent, they are still getting a feel for where things are and how things flow. This information may assist them in their efforts to respond to your request.

(R Vol. I, p. 85.)

Councilor Smith did not offer to relay the e-mail message or letter to fellow City council members, the mayor, or the City clerk (R Vol. I, p. 85), and Turner offers no evidence that he did so. Rather, Turner was effectively placed on notice that she needed to take her mileage and payroll claims to the City clerk. She never did.

4. Turner's Letter From the Mayor Proves Actual Notice, Nothing More.

Lastly, Turner asserts that she received a letter from Mayor Ricky Hernandez advising her that the City would notify her after it reviewed her request with an outside

accounting service. (R Vol. I, p. 80.) But not even this letter, which is not on City letterhead, makes clear exactly what Turner requested or what amounts were at issue. (R Vol. I, p. 80.) The letter references comp time, but not vacation or sick leave; and it mentions "other reimbursable items," but does not indicate that the City knew what items or amounts were subject to reimbursement. (R Vol. I, p. 80.) The letter does not reference or deny a request — much less a "claim" for "money damages" — filed on a given date with anyone. (R Vol. I, p. 80.)

In any event, as *Smith*, *Pounds*, *Stevens*, and *Avila* illustrate, the City's actual notice of Turner's request for payment of wages and expenses did not relieve Turner of the statutory requirement to provide the City clerk notice that she intended to further pursue her requests by a cause of action for damages. After Mayor Hernandez presumably failed to follow up within 30 days, Turner had an obligation to present the City clerk — to the exclusion of the rest of the world — with a "written demand" for "money damages" for unpaid wages under the Wage Claim Act and for breach of a contract to reimburse expenses. *See* I.C. §§ 6-902(7), 6-906. Such a claim, to be complete, should have apprised the City of the amounts of her claims and the circumstances or agreements that might possibly have justified her claim to damages for payment of 1,500 hours of comp time and vacation far exceeding all limits made applicable by City policy, enforced in annual audits by the City's auditors, and disregarded by Turner.

Turner did not do this. Turner's claims were properly dismissed by the District Court. This Court should therefore affirm the District Court's judgment.

II. TURNER'S WAGE CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.

Wage claims in Idaho are subject either to a two-year or six-month limitations period:

> Any person shall have the right to collect wages, penalties and liquidated damages provided by any law or pursuant to a contract of employment, but any action thereon shall be filed either with the department or commenced in a court of competent jurisdiction within two (2) years after the cause of action accrued, provided, however, that in the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within six (6) months from the accrual of the cause of action. . . . In the event an action is not commenced as herein provided, any remedy on the cause of action shall be forever barred.

I.C. § 45-614.

The two-year limitations period applies to claims for amounts that do not relate to and accrue in particular pay periods, such as severance pay, annual bonuses, or payments "on account." *See, e.g.*, *Johnson v. Allied Stores Corp.*, 106 Idaho 363, 367 (1984) (severance pay); *Thomas v. Ballou-Latimer Drug Co.*, 92 Idaho 337, 342 (1968) (bonus); *Anderson v. Lee*, 86 Idaho 300, 303–04 (1963) (payments "on account" not attributable to particular pay periods).

A six-month limitations period applies where, as in this case, an employee claims additional amounts for wages for pay periods for which she has already received some payment. *See, e.g.*, *Callenders, Inc. v. Beckman*, 120 Idaho 169, 174 (Ct. App. 1991) (additional partnership salary); *see also, e.g.*, *Wood v. Kinetic Sys., Inc.*, 766 F. Supp. 2d 1080, 1085–86 (D. Idaho 2011) (overtime and "accrued vacation pay" not paid at termination); *Long v. Idaho Rural Water Ass'n*, No. CV-05-303-S-EJL, 2007 WL 1366534, at *8 (D. Idaho Mar. 29, 2007) (training fees for trainings provided on specific dates); *Smith v. Micron Elecs., Inc.*, No. CV-01-244-S-BLW, 2005 WL 5328543, at * 6 (D. Idaho Feb. 4, 2005) (unpaid overtime).

A. Turner's Claim is Subject to a Six-Month Statute of Limitations.

Wood is directly on point with this case and faithful to this Court's application of § 45-614. The employer in *Wood* paid the plaintiff amounts it believed he was owed upon his termination. *Wood*, 766 F. Supp. 2d at 1083. Just like Turner here, the employee in *Wood* believed he was owed additional amounts for "accrued" and "unpaid" vacation pay and overtime. *Id.* He was terminated on January 20, 2009; paid his final paycheck on January 22, 2009; and filed a lawsuit nearly 10 months later on October 8, 2009. *Id.* The Court granted the employer summary judgment, *id.* at 1087, because the plaintiff's claim was for "additional" wages for pay periods for which he had already

received payment and thus was subject to the six-month limitations period, *id.* at 1085–86.

Turner's case is materially identical. The below facts demonstrate beyond dispute that: Turner received payment for each pay period in which she alleges she accrued vacation, sick pay, and comp time; those amounts accrued in particular pay periods; and the allegedly accrued amounts became due upon her termination, when she had the legal right to be paid any accrued wages.

It is undisputed that the City paid Turner her salary and wages for each pay period throughout her employment. (*See* R Vol. I, p. 25 ¶ 6, pp. 27–41.) Turner's paystubs reflected the periodic accrual, use, and balance of the alleged wages she now seeks. (*See, e.g.*, R Vol. I, pp. 45, 47.) Turner's own affidavit admits that her alleged comp time was accrued and payable for hours she allegedly worked "during each pay period." (R Vol. I, p. 63 ¶ 6; *see also id.* ¶ 5 (alleged comp time was earned for excess hours worked "during a given work week").) Turner thus accumulated her alleged wages in discrete, calculable amounts in each pay period over the course of her employment. *See* I.C. § 45-614 (referring to "pay period[s]").

Turner admits that the City paid her for all the "wages due and owing" the City believed were owed through the end of her employment. (R Vol. I, p. 7 ¶ 16.) Her claim is for "accrued" and unpaid comp time, vacation, and sick leave. (*See* R Vol. I, p. 7

¶¶ 19–20.) She admits that these amounts are additional to wages she was already paid, i.e., "the remainder of her due and owing wages." (R Vol. I, p. 7 ¶ 16 (emphasis added).) In both *Wood* and *Callenders*, the Court noted that the plaintiff had pled "additional" wages. *See Wood*, 766 F. Supp. 2d at 1085; *Callenders*, 120 Idaho at 174. A plea for "remaining" wages is a plea for "additional" wages.

Thus, in the words of the statute, "salary or wages have been paid to [Turner]," and she claims "additional . . . wages" due to her "because of work done or services performed during [her] employment" for "pay period[s] covered by said payment." *See* I.C. § 45-614. Therefore, Turner had only six months to file her action for unpaid wages.

Turner's cause of action accrued no later than January 20, 2011, her last day of employment with the City. *See Wood*, 766 F. Supp. 2d at 1085–86. The limitations period expired no later than July 20, 2011. She filed the present action on December 21, 2012. (R Vol. I, p. 4.) Her wage claim is thus untimely and should be dismissed as a matter of law.

B. Accrual of Wages Is Distinct From Accrual of a Cause of Action.

In briefing and argument in the District Court, Turner misdirected the above analysis by repeatedly conflating accrual (or accumulation) of wages in each pay period over the course of employment with accrual of a cause of action for payment of those accrued wages upon termination of employment. (R Vol. I, pp. 56–60.) By insisting on

this conflation, Turner setup the following straw man argument she attributed to the City, but which the City did not and does not make: namely, Turner argued that the City's reading of the statute resulted in a new claim accruing and a new, six-month clock starting at the end of each of Turner's pay periods, which claim then expired six months later even while Turner was still employed. (R Vol. I, p. 57.)

Turner's argument misapprehends the law and the City's analysis. Both parties agree that Turner's cause of action — even for alleged wages accumulated years before — accrued on her last day of employment, January 20, 2011, when she had a legal entitlement to be paid any wages that allegedly (1) had accumulated in each pay period over the course of her employment but (2) were not payable in cash until her termination.

But there is also no genuine dispute that Turner seeks additional compensation that accumulated in pay periods for which she already received paychecks. Given these facts, Turner's cause of action is subject to a six-month limitations period under § 45-614.

Several cases confirm that accrual of the cause of action is a separate inquiry from which statute of limitations applies under § 45-614. For example, a Ninth Circuit panel had to clarify confusion similar to Turner's in its unpublished opinion in *Leher v. Western States Equipment Co.*, 908 F.2d 977 (9th Cir. 1990):

> Although Leher may not have been entitled to the commission until April or May of 1987 . . . this does not affect the applicable statute of limitations, but rather, the date of the accrual of the action.

Id.

The Court of Appeals in *Callenders* summarized the two distinct concepts applicable in this case perfectly:

> [An] action to collect . . . wages must be commenced within six months after the cause of action accrues if the claim is for wages additional to those already paid. I.C. § 45-614. A cause of action for the collection of wages accrues when an employee has a right to collect the wages that are allegedly owed to him.

Callenders, 120 Idaho at 173–74.

In briefing before the District Court, Turner cited two cases that do nothing more than confirm the City's position that Turner's cause of action accrued upon her termination. In *Gilbert v. Moore*, 108 Idaho 165 (1985), the plaintiff filed suit two weeks after his termination. *Id.* at 166–67. As *Gilbert* noted, "The crucial issue is determining when Mr. Gilbert's cause of action accrued." *Id.* at 167. Because Gilbert's cause of action did not accrue until he was terminated, i.e., two weeks before Gilbert filed suit, the Court did not even address which statute of limitations applied. *See id.* at 167–68.

Similarly, in *Schoonover v. Bonner County*, 113 Idaho 916 (1988), the plaintiff had accumulated overtime that was payable upon his termination. *Id.* at 919. He filed suit to recover his accumulated overtime "within one month of [his] termination." *Id.* at 918.

These cases simply support a point on which all parties agree: Turner's cause of action accrued upon her termination from employment. Neither case assists Turner, because in neither case did the plaintiff wait more than six months to file his lawsuit. *See id.*; *Gilbert*, 108 Idaho at 166–67.

Turner's specious argument cannot stand in the way of the straightforward analysis of § 45-614 that follows from Turner's own pleadings and affidavit.

C. Public Policy Does Not Support Application of a Two-Year Limitations Period.

In the District Court, Turner appealed to public policy in support of application of a two-year limitations period. (R Vol. I, p. 60.) No liberality of construction or public policy remotely approves a claimant like Turner — fully apprised of all facts necessary to her claim — to send several informal requests for payment of wages and then sit on her claim for another 22 months.

Indeed, Turner's own evidence indicates that by at least February 28, 2011, when she sent her letter to Councilor Smith, she knew court action may be necessary, she was represented by an attorney, and she had researched some law relevant to wage claims: (1) her email expresses her wish not "to defend myself over this letter in court some day" (R Vol. I, p. 77); (2) her letter specifically references "my attorney" (R Vol. I, p. 78 ¶ 3); and (3) her letter references her "claim with the US Department of Labor" and her belief

that "the law allows 48 hours" for an employer to pay demanded wages (R Vol. I, p. 78 ¶ 4).

Especially in light of these facts, public policy counsels against a liberal reading of the statute of limitations in this case, not for it. Turner provides no evidence justifying a 22-month delay in filing her wage action.

Regardless, as the cases demonstrate, there is no relevant ambiguity in the statute that justifies application of policy considerations or a two-year limitations period.

Wood is directly on point with Turner's case and its analysis is consistent with this Court's case law. *See Wood*, 766 F. Supp. 2d at 1085–86. Ultimately, Turner's own testimony in opposition to summary judgment (R Vol. I, p. 63 ¶¶ 5–6, p. 64 ¶ 12) — as with her Complaint's request for "remain[ing]" wages (R Vol. I, p. 7 ¶ 16) — plead her squarely into the six-month limitations period made applicable by § 45-614. Her wage claim is barred because she filed it well more than six months past January 20, 2011.

CONCLUSION

For the foregoing reasons, the Court should affirm the District Court's entry of judgment in favor of the City on all of Turner's claims.

DATED this 15th day of April, 2014.

CLEMENTS, BROWN & McNICHOLS, P.A.

By _____
BENTLEY G. STROMBERG

By _____
JOSHUA D. MCKARCHER

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of April, 2014, I caused to be served two (2) true and correct copies of the foregoing BRIEF OF RESPONDENT CITY OF LAPWAI by U.S. Mail addressed to the following:

John M. Howell
Matthew G. Gunn
Brassey, Crawford & Howell, PLLC
P.O. Box 1009
Boise, ID 83701-1009

_____
Joshua D. McKarcher